



1 statute which authorizes the Secretary of State “to deny [an] application and . . . to not  
 2 issue a passport to [an] individual” when it receives a passport application from an  
 3 individual that “does not include the social security account number issued to that  
 4 individual.” 22 U.S.C. § 2714a. On July 14, 2021, Petitioner reapplied for a passport.  
 5 (*Id.* ¶ 5.) On December 3, 2021, Respondent sent Petitioner a letter again denying the  
 6 application under 22 U.S.C. §2714a. (*Id.*)

7  
 8 Petitioner alleges that “compulsion to obtain a Social Security account, as a  
 9 prerequisite to a U.S. Passport application [is] unconstitutional” and seeks a “writ of  
 10 mandate” “directing and compelling Respondent” to grant his passport application “and  
 11 issue Petitioner a new Passport forthwith.” (*Id.* at 9.) Before the Court is Respondent’s  
 12 motion to dismiss. (Dkt. 20.)

13  
 14 A plaintiff may request that a district court issue a writ of mandamus to compel an  
 15 officer or employee of the United States, or any agency thereof, to perform a duty owed  
 16 to the plaintiff. 28 U.S.C. § 1361. Mandamus is a drastic remedy only to be used where  
 17 “(1) the plaintiff’s claim is clear and certain; (2) the defendant official’s duty to act is  
 18 ministerial, and so plainly prescribed as to be free from doubt; and (3) no other adequate  
 19 remedy is available.” *Barron v. Reich*, 13 F.3d 1370, 1374 (9th Cir. 1994) (cleaned up).

20  
 21 Petitioner’s claim is not clear and certain. “If a plaintiff has no legal entitlement to  
 22 the relief sought, a ‘clear and certain’ claim cannot exist, and the writ will not lie.”  
 23 *Lowry v. Barnhart*, 329 F.3d 1019, 1021 (9th Cir. 2003). “It is at the very least arguable”  
 24 that Respondent’s decision to deny Petitioner’s application was lawful. *In re California*  
 25 *Power Exch. Corp.*, 245 F.3d 1110, 1121 (9th Cir. 2001). Indeed, constitutional  
 26 challenges like Petitioner’s to Section 2714a have failed. *See, e.g., Walker v. Tillerson*,  
 27 2018 WL 1187599, at \*8 (M.D.N.C. Mar. 7, 2018), *aff’d sub nom. Walker v. Pompeo*,  
 28 735 F. App’x 69 (4th Cir. 2018) (rejecting claim that the statute violated a constitutional

1 right to travel because “[u]nder rational basis review, [the plaintiff] has not carried his  
2 burden to demonstrate that the Government’s decision to require a social security number  
3 before issuing a passport is not ‘rationally related to a legitimate state interest’”).

4  
5 Respondent’s duty to act is also not ministerial. The statute states that the  
6 Secretary of State “is authorized to deny” an application that does not include an  
7 individual’s SSN and “is authorized to not issue a passport to the individual.” 22 U.S.C.  
8 § 2714a. The statute does not require the Secretary to take the action Petitioner seeks.  
9 *See Tsang v. Berryhill*, 738 F. App’x 549, 550 (9th Cir. 2018) (determining the district  
10 court properly denied mandamus relief when the court could not conclude “that the  
11 Administrator’s duty is non-discretionary and merely ministerial”); *cf. Indep. Mining Co.*  
12 *v. Babbitt*, 105 F.3d 502, 508 (9th Cir. 1997) (defining “ministerial act” as “a clear, non-  
13 discretionary agency obligation to take a specific affirmative action, which obligation is  
14 positively commanded and so plainly prescribed as to be free from doubt”). Indeed, the  
15 Secretary’s authority to issue passports “recognizes substantial discretion.” *Haig v. Agee*,  
16 453 U.S. 280, 294 (1981); 22 U.S.C. § 211a (“The Secretary of State may grant and issue  
17 passports.”).

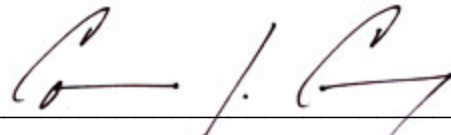
18  
19 Finally, Petitioner does not allege that no other adequate remedy is available. *See*  
20 *Barron*, 13 F.3d at 1374. Indeed, in his opposition, he seems to concede that he could  
21 seek relief under the Administrative Procedure Act. (*See* Dkt. 23 at 5.)

22  
23 Petitioner does “not state a claim for a writ of mandamus and dismissal under Rule  
24 12(b)(6) [is] appropriate.” *Grondal v. United States*, 37 F.4th 610, 621 (9th Cir. 2022).  
25 Accordingly, Respondent’s motion is **GRANTED**.<sup>1</sup> Moreover, Petitioner does not  
26

27  
28 <sup>1</sup> Having read and considered the papers the parties presented, the Court finds this matter appropriate  
for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing  
scheduled for September 11, 2023, is hereby vacated and removed from the calendar.

1 identify any factual allegations he could add to the petition to cure these deficiencies. *See*  
2 *id.* Leave to amend this petition for writ of mandamus would therefore be futile. *Id.*  
3 (affirming dismissal without leave to amend when the plaintiff “never identifie[d] the  
4 factual allegations it would add to the complaint to cure its failure to plead that no other  
5 remedy is available” and “[t]his omission of an element necessary for mandamus relief  
6 validates the district court’s conclusion that leave to amend . . . would be pointless”).  
7 Petitioner’s Petition for Writ of Mandate is **DISMISSED WITH PREJUDICE**.

8  
9 DATED: August 25, 2023

A handwritten signature in dark ink, appearing to read 'C. J. Carney', is written over a horizontal line.

CORMAC J. CARNEY

UNITED STATES DISTRICT JUDGE